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TAGS: [PGOV](#) [PREL](#) [KDEM](#) [IZ](#)  
SUBJECT: POLITICAL PARTIES REACT TO JUDICIAL DECISION TO  
ALLOW POST-ELECTION DE-BA'ATHIFICATION VETTING

REF: BAGHDAD 285

Classified By: ACTING DEPUTY CHIEF OF MISSION GARY A. GRAPPO FOR REASON  
1.4 (B) AND (D).

11. (C) SUMMARY AND COMMENT: The Cassation Chamber's February 3 decision ordering the Independent High Electoral Commission (IHEC) to allow all candidates who have appealed their de-Ba'athification disqualifications to remain on the ballot was widely denounced by the major Shi'a-led parties as "unconstitutional." The Iraqi National Alliance (INA) and PM Maliki's State of Law Alliance (SLA) lambasted "U.S. interference with the de-Ba'athification process" and regretted that the judicial panel's decision might lead to "restoring Ba'athists to parliament." According to Parliament Speaker Sammarrai'e, PM Maliki was so upset by the ruling that he asked the Speaker to convene a special session of parliament as soon as possible. Council of Representatives (COR) staff that the special session will likely be held on February 9 after Shi'a MPs return from Arba'een commemorations. Independent High Electoral Commission (IHEC) contacts reported that IHEC Chairman Faraj al-Haidary had asked the Federal Supreme Court for its opinion on whether the Cassation Chamber's ruling was binding. (NOTE: Chief Judge Medhat al-Mahmoud confirmed to A/DCM the evening of February 3 that the court's ruling would be binding on IHEC. See reftel. END NOTE.) IHEC Commissioner Hamdiya al-Husseini told us that IHEC decided to postpone the official start of the campaign by five days to February 12, to allow more time for resolution of this matter. While Shi'a heavyweights Ammar al-Hakim (ISCI chair) and Hadi al-Amiri (Badr bloc leader) were working for a political deal to the de-Ba'athification issue early in the process, all SLA and INA leaders have coalesced to take a hard position against the court's action. The Cassation Chamber's decision is arguably the first time that an Iraqi governmental institution has risen above political currents to take an independent position, apparently based on the Iraqi Constitution. END SUMMARY AND COMMENT.

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INA AND SLA DENOUNCE DECISION AS UNCONSTITUTIONAL  
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12. (U) The Iraqi press reports that officials from the Shi'a-led Iraqi National Alliance (INA) and PM Maliki's State of Law Alliance (SLA) met February 3 to discuss the Cassation Chamber's decision to order IHEC to allow all candidates who have appealed their de-Ba'athification disqualifications to run in the upcoming elections (reftel). After the meeting, SLA spokesman Hassan al-Sunayd told the media that his coalition believed the judicial panel's decision was invalid, noting: "The Cassation Chamber has no legal authority to make this type of decision; its authority is limited to examining the appeals referred to it by candidates on the de-Ba'athification list and ruling on those." Sunayd accused the judicial panel of failing to understand the emotional and

historical legacy of Ba'athist rule in Iraq, and said "this decision constitutes the spilling of Iraqi blood, and reflects an irresponsible stance on what the Ba'ath did to Iraqis."

¶3. (U) For its part, the INA issued an official statement early on February 4, stating: "The decision of the Cassation Chamber to postpone the exclusion of those covered by de-Ba'athification laws is not supported by constitutional principles. The said court is limited to reviewing the procedures of the Accountability and Justice Commission, and procedures of the Accountability and Justice Commission, and should not give opinions of a political dimension." The statement went on to condemn the "interference of the United States, especially from Vice President Biden and the Ambassador" and claimed that "the ruling is reminiscent of the attempts by some to reinstate the Ba'athists to government institutions and undermine the course of democracy while it overrides the principle of justice." In an interview with Iraqi television stations on February 3, Sadrist Trend MP Baha al-Araji said that he wasn't surprised by the decision, and alleged: "Occupation forces in Iraq control all Iraqi decisions, and they successfully applied pressure through Biden's trip and Vice President Tariq al-Hashimi's visit to the U.S. in order to convince the Accountability and Justice Commission (SIC) to allow these candidates to participate in the election."

¶4. (U) GOI Spokesman Ali al-Dabbagh (SLA candidate for parliament) denounced the judicial panel's decision as "illegal and unconstitutional" in a press release on February 4. While asserting that the GOI is keen to guarantee the rule of law, Dabbagh stated that "the law should be applied to those who are eligible for using the mechanism and procedures of appeal, those who can prove that they are

included within the law." He further added that the GOI was committed to "holding legitimate elections that are transparent and honest."

¶5. (C) Complaining that the judicial panel's decision "just postpones the problem, rather than solving it," Dabbagh commented to USFI and Embassy spokesmen on February 3 that the court was allowing some Ba'athists to participate in the election. MP Falih al-Fayyad (INA/National Reform Trend), a close associate of former PM Ibrahim Ja'afari, told POL LES on February 4 that the judicial decision exacerbated a sensitive issue for Iraqis, and was not welcomed. Da'wa parliamentary staffer Ahmed Mofeed told poloff that the SLA was disappointed with the ruling, and believed the judicial panel had "opened the door to Ba'athists in parliament." He worried that the decision would lead to even greater tension and security concerns during the campaign season. Former COR Speaker Mahmoud Mashadani, a Sunni independent running under Minister of Interior Bolani's cross-sectarian Coalition of Iraq's Unity, which was disproportionately targeted by the AJC, criticized the judicial decision to A/DCM on February 4, arguing: "It's not a solution, but a postponement that will confuse voters. It benefits Sunnis, but what about the Shi'a? And as candidates, how can we enter elections without knowing what the post-election de-Ba'athification decision will be?"

¶6. (C) In a sign of frustration, PM Maliki reportedly asked COR Speaker Sammarrai'e to convene a special parliamentary session as soon as possible to discuss the Cassation Chamber's ruling. Sammarrai'e told A/DCM on February 4 that Maliki was "very upset" about the ruling, and worried that it had "created great anger in the South (of Iraq)." The Speaker said he responded to the PM that "if there is great anger, then we must find a way to deal with it." However, Sammarrai'e agreed that the Cassation Chamber's ruling must be respected, and IHEC must accept it, and that all parties should proceed "in a legal way." Sammarrai'e reported he had raised two reservations to Maliki in regard to the proposed special session: first, that he needed a reason, an issue to decide, in order to seek an extraordinary session, and second, that President Talabani should be involved, but at

present he was in Suleimaniya.

¶7. (C) Samarra'i'e shared that in his view, it was critical that the Chamber continue its work now and decide "as many cases as possible before the elections." He said it would be "very dangerous" if all the vetting was performed and announced after the elections. In his opinion, the election results would likely end up with no decisive winner, so the parties would struggle for every political advantage. It was inevitable in such a charged atmosphere that the process of adjudicating the de-Ba'athification appeals would become highly politicized, with the judges coming under enormous pressure. This would increase "tension and the risks of violence." Samarra'i'e argued it would even provoke political assassinations, and underlined in particular that Saleh al-Mutlaq and Dhafer al-Ani could face such a threat.

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DECISION STIRS UP CROWDS AT RELIGIOUS PROCESSIONS  
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¶8. (SBU) While observing the Arba'een religious processions to the Imam Hussein mosque in downtown Karbala, PRT Karbala local staff reported that a group of approximately 10,000 pilgrims from Sadr City led exhortations to the crowd to condemn foreign interference in the de-Ba'athification process. PRT LES reported that this group shouted the following: "The American intervention allowed Saleh al-Mutlaq and Dhafer al-Ani to return," "the Appeals Court is not representing Iraqi wishes," and "those who have been allowed to return and run in the elections are the grandsons of the murderers of Imam Hussein."

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SECULAR AND INDEPENDENT ACTORS PRAISE DECISION  
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¶9. (SBU) Echoing his earlier comments to the press, one of the leading actors in the de-Ba'athification drama, MP Saleh al-Mutlaq (Iraqiyya/IFND), characterized the Cassation Chamber's decision to poloff as "A victory for all Iraqis, a victory of the Iraqi judicial system, and a triumph of the freedom-loving international community." He cautioned poloff that some of his opponents could still try to "sabotage" Iraqiyya candidates after the election. Iraqiyya bloc leader MP Jamal al-Batikh (Shi'a) was enthusiastic in his comments to the press on February 4, noting that the decision was a positive step that came as a result of "domestic and external advocacy." One of the Iraqi Cabinet's proposed nominees for

the AJC who was voted down in December 2009, Mahdi Saleh Aydaan Ibrahim (Sunni independent), observed to poloff on February 4 that the judicial decision might lead to "trouble" after the election, but was a positive decision for all Iraqis. MP Hunein Qaddo (Shabak, independent) told poloff that the decision of the Cassation Chamber was a sign that Iraq enjoyed full democracy and an independent judiciary.

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IHEC SEEKS POLITICAL COVER  
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¶10. (C) IHEC Commissioner Judge Qasim al-Aboudi (ISCI) confirmed to poloff February 4 that IHEC sought direction from the Federal Supreme Court on whether allowing candidates to undergo de-Ba'athification after the election is a violation of the amended election law (article 6). Judge Qasim predicted that the FSC would issue a ruling within a few days. IHEC Commissioner and Chief Operating Officer Hamdiya al-Husseini (Da'wa) told poloff that IHEC decided on February 4 to delay the official start of the election campaign from February 7 to February 12 in order to allow more time for resolution of this matter. Husseini confirmed that IHEC began printing the candidate lists today, but has provisions that will allow IHEC to print addenda with the names of candidates reinstated through the appeals process.  
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